

UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

BLUE CREEK PRODUCE, LLC

Plaintiff

v.

BIG CITY PRODUCE, INC., et al

Defendants

Civil No. 1:07-cv-07849-LTS

**CONSENT JUDGMENT
STIPULATION AND ORDER**

Plaintiff, Blue Creek Produce, LLC, ("Plaintiff") by and through its undersigned attorneys,
 and Defendant, Indumati Kothari, ("Defendant"), by and through her undersigned attorneys, (Plaintiff
 and Defendant collectively referred to as "the Parties") consent, agree and stipulate to the entry of
 Judgment and other relief as follows:

1. Plaintiff is a trust creditor under the provisions of the Perishable Agricultural
 Commodities Act ("PACA"), 7 U.S.C. §499e(c), against Defendant, Indumati Kothari on a debt in
 the principal amount of \$22,507.50, plus interest in the amount of \$6,410.71 and attorneys' fees in the
 amount of \$16,000.00, for a total amount due of \$44,918.21 ("PACA Amount Due").

2. To satisfy the forgoing PACA Amount Due, Defendant agrees to entry of a Judgment
 in favor of Plaintiff and against Defendant in the amount of \$22,507.50 ("Judgment Amount"),
 payable to Plaintiff as follows: \$5,000.00 immediately upon entry of this Consent Judgment,
 Stipulation and Order and \$500.00 per month on the first day of each month, commencing on July 1,
 2008, until the Judgment Amount is paid in full. All payments shall be made by check, deposit or
 wire transfer, payable to Blue Creek Produce, LLC and delivered to Blue Creek Produce, LLC, 303
 West Main Street St. Charles, IL 60174 on or by the date payment is due.

6. The Parties' agreement to the payments set forth in paragraph 2 is without prejudice to Plaintiff's standing as a PACA trust creditor as set forth in paragraph 1, above. The original credit terms between the Parties are not intended to be modified, nor are they modified by this Consent Judgment, Stipulation and Order. Nothing herein, nor the installment nature of the payments being made hereunder, shall be deemed, interpreted or otherwise construed as an extension of credit by Plaintiff to Defendant, nor as a waiver of Plaintiff's rights under the PACA statutory trust as set forth in 7 U.S.C. § 499e(c), and Plaintiff's rights under this Consent Judgment, Stipulation and Order are in addition to its rights under said trust.

7. Upon receipt of the initial payment of \$5,000.00 from Defendant, Plaintiff shall notify the Secretary of Agriculture that the Decision and Order entered on April 18, 2008 in favor of Plaintiff and against Big City Tropical Corp., File PACA E-R-2007-178, Docket R-08-038, has been satisfied, subject to the terms of this Consent Judgment, Stipulation, and Order. If Defendant defaults in the performance of any obligation under this Consent Judgment, Stipulation and Order and fails to cure the default as provided in paragraph 4 above, or if Defendant has defaulted and cured the default two (2) previous times in any given calendar year and defaults a third time in the same calendar year, Plaintiff reserves the right to revoke the notice of satisfaction of said Decision and Order.

8. All assets of Defendant derived directly or indirectly from produce sales are impressed with the PACA trust for Plaintiff's benefit until the Judgment stipulated herein is paid in full or Defendant complies with the terms of paragraph 2.

9. With the exception of the initial payment of \$5,000.00, any amount paid by Defendant to Plaintiff at any given time shall be applied to the outstanding balance for the month in which such payment is received and any amount paid by Defendant in excess of that currently due

shall be applied to the subsequent consecutive months. There shall be no penalty against Defendant for pre-payment of the Judgment Amount or scheduled payments as set forth in paragraph 2.

10. Defendant shall be entitled to seek indemnification for the damages it incurred in this action from Ju Gil Joen, however nothing in this paragraph shall be deemed to limit Plaintiff's rights under this Stipulation.

11. Defendant neither admits nor denies liability for the actions which are the subject of this action.

12. Upon payment to Plaintiff of all sums required to be paid under this Stipulation, Plaintiff will promptly mark the Judgment satisfied.

13. This Consent Judgment, Stipulation, and Order may be executed by the Parties or by the Parties' authorized representative acting with active authority from their principal in Counterparts, and collectively all signed Counterparts represent one Agreement.

14. The Parties acknowledge having had the opportunity to discuss this Consent Judgment, Stipulation, and Order with their attorneys, and that they have availed themselves of that opportunity to the extent they have desired to do so. This Stipulation constitutes the entire understanding of the parties and may only be changed in a writing signed by counsel for all Parties.

15. The Court shall retain jurisdiction over the parties during the pendency of the application of this Order.

16. Plaintiff's waiver of rights against the co-defendants is conditioned upon Defendant complying with the terms of this Stipulation.

17. This Consent Judgment, Stipulation, and Order shall be governed by the laws of the state of New York.

Dated this 16th day of June, 2008.

LAW OFFICES OF BRUCE LEVINSON

KAYE SCHOLER LLP

By: 

Bruce Levinson (BL-0749)
Gregory Brown (GB-1977)
747 Third Avenue, Fourth Floor
New York, New York 10017-2803
Tel. (212) 750-9898

Attorneys for Plaintiff

By: 

Jeffrey A. Fuisz (JF 4146)
Shefali Kothari (SK 3358)
425 Park Avenue
New York, NY 10022-3598
Tel. (212) 836-8000

Attorneys for Indumati Kothari